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Chairman Julius Genachowski  
Commissioner Michael J. Copps  
Commissioner Robert McDowell  
Commissioner Mignon Clyburn  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

In the Matter of: Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting; WC Docket No. 11-59

Dear Chairman Genachowski and Commissioners:

On July 18, 2011, NextG Networks, Inc. ("Next G") submitted comments to the Federal Communications Commission ("FCC") that took issue with the manner in which the County of San Diego (the "County") has processed Next G's permit application. The County responds to those comments in detail below:

NextG Comment 1: *The application process in San Diego County is protracted, bureaucratic and replete with hidden, circular and unreasonable requirements. By the County's own admission the application process for DAS nodes may take as long as 18-24 months. In May 2010 NextG filed an application to install 14 DAS nodes in the County. To date, San Diego County still deems NextG's application incomplete—despite NextG's provision of prompt and complete responses to each of the*

*County's four notices of incomplete application (called "scoping" letters by the County).*

Response: The original estimate of an 18-24 month processing time was provided to NextG before the County knew the details of NextG's project. This estimate was a "worst case scenario" that was based on the assumption that the project would require the preparation of a Mitigated Negative Declaration under the California Environmental Quality Act ("CEQA"). Once NextG submitted the project application and the project scope became known to the County, the estimated processing timeline for the project was changed to 9 months as stated in the Scoping Letter issued on June 29, 2010.

NextG's assertion that the County is primarily responsible for the delay in processing its application is false. The County has spent approximately four months reviewing the project. NextG, however, has spent approximately ten months gathering and providing the information needed by the County to process the permit application. Thus, the delay is due to tardy and inadequate submittals from NextG, not the actions of the County.

Further, the County has been transparent in all stages of the process. It has explained the rationale for each of its requests for information as demonstrated in the Scoping Letter, Iteration Letters, and face-to-face working meetings.

Indeed, the County recently met with representative of NextG in an effort to address its concerns. The parties are close to resolving the "legal lot" issue that has prevented the project application from being deemed complete.

NextG Comment 2: *The County operates on a cost recovery basis and thus each resubmission of its applications in response to a County scoping letter negatively impacts NextG both in terms of time and expense. To date, NextG has expended nearly \$40,000 in permitting fees on this allegedly "incomplete" application and has been notified by the County to expect its application review to exceed \$98,000 by completion.*

Response: The high permitting cost is the result of the following:

- (1) An inordinately large number of public inquiries received from neighbors of the project;
- (2) The fact that NextG made changes in the number of nodes and location of nodes after the Scoping Letter was issued (which required notice to be provided to the surrounding neighbors of each new/revised node location); and
- (3) NextG has requested multiple meetings with the County, and its attorneys sent numerous letters to the County during the early stage of the process, which required a County response. Significant staff time was spent responding to the attorneys' letters and meeting with NextG.

Although the estimated cost schedule does include the potential for the overall cost to increase, it is based upon the amount and intensity of work that is required. Changes to the project description such as the node locations have occurred due to NextG's needs, which are beyond the County's control. The overall cost of the project has been result of NextG's conduct.

NextG Comment 3: *Each time NextG submits a response to one of the County's scoping letters, the application process starts over and the entire application is routed for review by all applicable county departments—even if these departments had previously signed off on the application. What this means is that multiple departments are reviewing the project multiple times for no reason other than to sign off on the application—all the while billing time and burning weeks to re-examine previously uncontested portions of the application.*

Response: NextG's assertion that the "application process starts over and the entire application is routed for review by all applicable county departments . . ." is simply wrong. The project is resubmitted to specific departments/staff for review **only** if: 1) the department(s) request additional information that NextG subsequently submits and/or 2) new information becomes available that is relevant to a department's review of the application.

Specifically, the County's Department of Public Works needed to re-review the project because NextG provided incorrect Assessor's Parcel Numbers with the application. This is the only "re-review" of NextG's application that has occurred.

NextG Comment 4: *In addition to the exorbitant fees and lengthy permit review timeframe, the County application process also includes excessive "proof" requirements. NextG was required to survey and document that each node location will in fact be located in the public way. Both NextG and its customer were required to complete the Federal Aviation Administration clearance process. These requirements are both costly and time consuming. More importantly, if any changes are made to the location of a node, the work and money invested to complete these tasks are wasted and need to be performed again in order to account for newly-proposed alternative site locations. In other jurisdictions, these same types of requirements typically are imposed only as conditions for approval, once an application is final and staff has no further changes or clarifications, not as criteria for completion of the application itself.*

Response: It is crucial for the County to ensure that the proposed nodes are located within a public right-of-way. If not, they cannot be built on private property without the owner's consent. That is why a survey and documentation is required.

With respect to the Federal Aviation Administration ("FAA") clearance issue, the County has agreed to make submission of the FAA clearance letter a condition of approval and to not require that it be submitted as part of the application process.

The County thanks the FCC for this opportunity to present its side of the story.

Very truly yours,

THOMAS E. MONTGOMERY, County Counsel

By



THOMAS D. BUNTON, Senior Deputy